

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FG HEMISPHERE ASSOCIATES, LLC,

Plaintiff-Judgment-Creditor,

v.

DEMOCRATIC REPUBLIC OF CONGO, et ano.,

Defendant-Judgment-Debtor.

19-mc-00232-JPO

[PROPOSED] ORDER

WHEREAS on December 21, 2015, in the action captioned *FG Hemisphere v. Democratic Republic of Congo, and Societe Nationale D'Electricite*, Nos. 03-1314, 03-1315, the United States District Court for the District of Columbia issued an order reviving a judgment issued by the Court on September 19, 2004 in the amount of \$11,725,844.96, together with interest at the annual rate of 9% on the sum of \$11,179,266.36 (“2004 Judgment”), and

WHEREAS on December 21, 2015, in the action captioned *FG Hemisphere v. Democratic Republic of Congo, and Societe Nationale D'Electricite*, Nos. 03-1314, 03-1315, the United States District Court for the District of Columbia issued an order reviving a judgment issued by the Court on January 31, 2005 in the amount of \$18,430,555.47, together with interest at the annual rate of 8.75% on the sum of \$18,073,746.94 (the “2005 Judgment”, and collectively with the 2004 Judgment, the “Judgments”), and

WHEREAS on April 11, 2019, pursuant to 28 U.S.C. § 1963, Plaintiff registered the 2005 Judgment with the United States District Court for the Southern District of New York in the action captioned *FG Hemisphere Assocs., LLC v. Dem. Repub. of Congo, and Societe Nationale E'Electricite (S.N.E.L.)*, No. 1:19-mc-00189-DLC (S.D.N.Y.), and

WHEREAS on May 2, 2019, pursuant to 28 U.S.C. § 1963, Plaintiff registered the 2004 Judgment with the United States District Court for the Southern District of New York in the action

captioned *FG Hemisphere Assocs., LLC v. Dem. Repub. of Congo, and Societe Nationale E'Electricite (S.N.E.L.)*, No. 1:19-mc-00232-JPO (S.D.N.Y.), and

WHEREAS the Judgments have not been satisfied in their entirety, and

WHEREAS the Court finds that sufficient time has elapsed since the Judgments were entered to permit enforcement to commence, and that enforcement may proceed at this time consistent with the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.*, and

WHEREAS Plaintiff has demonstrated, through the Declaration of Warren E. Gluck, Esq. dated August 10, 2021 and the exhibits thereto, the Declaration of Peter Grossman dated August 10, 2021 and the exhibits thereto, and the memorandum of law submitted in support hereof, that the payment obligations owed by the DRC are subject to enforcement in aid of the Judgements under Article 52 of New York's Civil Practice Law and Rules ("CPLR").

IT IS HEREBY ORDERED, pursuant to Rule 69 of the Federal Rules of Civil Procedure ("FRCP"), and Article 52 of the CPLR that:

(a) Plaintiff is authorized to deliver writs of execution to the United States Marshals Service pursuant to Article 52 of the CPLR permitting execution on the DRC and its agents' property in the United States to satisfy the Judgments;

(b) Plaintiff is authorized to issue restraining notices on TD Bank and the United Nations Federal Credit Union ("UNFCU") accounts of the DRC and its sub-division, the Permanent Mission of the Democratic Republic of Congo ("DRC Mission"), Ignace Gata Mavita wa Lufuta, Paul Losoko Efambe Empole, Victoria Lieta Liolocha, Hippolyte Kingonzila Mfulu, Bianza Therese Yvette Mpinga, and Marie Huguette Nkus Ngung pursuant to FRCP 64 and 69(a) and CPLR § 5222;

(c) TD Bank and the UNFCU, as garnishees, are directed to turn over all assets of the DRC and its sub-division, the DRC Mission, held in accounts in the name of the DRC Mission or in any of the names Ignace Gata Mavita wa Lufuta, Paul Losoko Efambe Empole, Victoria Lieta Liolocha,

Hippolyte Kingonzila Mfulu, Bianza Therese Yvette Mpinga or Marie Huguette Nkus Ngung pursuant to FRCP 64 & 69(a) and CPLR §§ 5225(b) and/or 5227;

(d) Plaintiff shall be given priority over other creditors who may also seek to attach or execute upon the same assets described in this Order; and

(e) the DRC and its agents are required to respond to expedited discovery, pursuant to FRCP 69, so that Plaintiff can identify any additional property in the United States that is or will become available to satisfy Plaintiff's Judgments.

Dated: New York, New York
August ___, 2021

SO ORDERED:

Hon. J. Paul Oetken, U.S.D.J.